

# **EXHIBIT B**



to escape to the surrounding lands, air, and groundwater. According to the Plaintiffs, since 1905 the Plant has been used for treating and preserving railroad crossties, bridge timbers, poles, pilings, and other wood products with pesticides and wood preservatives that include both coal tar creosote and pentachlorophenol. The Plaintiffs purport to represent a class of individuals whose real property has been contaminated by the alleged escape of toxins since 1905.

On September 6, 2005, Vulcan, Burlington Northern Santa Fe Railway Company, The Dow Chemical Company, and Koppers Industries, Inc. all filed timely answers to the Plaintiffs' Class Action Complaint. Under Local Court Rule CV-23, the Plaintiffs were required to file a motion for class certification by October 6, 2005. As of the time of filing of this motion, October 11, 2005, the Plaintiffs have failed to file a motion for class certification, and therefore the class allegations should be stricken.

## II.

### ARGUMENTS AND AUTHORITIES

#### Plaintiffs Violated Local Court Rule CV-23.

This Court should strike all class allegations contained in Plaintiffs' Class Action Complaint because the Plaintiffs failed to file a motion for class certification within 30 days after any Defendant's first pleading. Local Court Rule CV-23 provides:

When a class action allegation is made in any pleading, the movant shall file, within thirty days after any defendant's first pleading, a motion for class certification. The motion shall include, but is not limited to, the information set forth in Appendix "A". Failure to timely file a motion for class certification *shall* constitute a waiver of the request for any class action.

Local Court Rule CV-23 (emphasis supplied).

The last sentence of this rule mandates that the Plaintiffs' class allegations be stricken for their failure to satisfy the 30 day deadline. In *Joseph N. Main P.C. v. Electronic Data Sys. Corp.*, the court struck all class allegations from the plaintiff's amended complaint and the

original class petition based on a violation of the Northern District of Texas Local Rule 10.2(d), which requires a plaintiff to file a motion for class certification within 90 days of the filing of a complaint alleging a class action. 168 F.R.D. 573, 576 (N.D. Tex. 1996). There, the plaintiff originally filed a class petition in state court, which was later removed. *Id.* The court held that the plaintiff had 90 days from the date of removal to file the motion for class certification. *Id.* In striking the plaintiff's class action allegations, the court emphasized that the local rule provided that the plaintiff *shall* move for certification. *Id.*

Likewise, here, the Plaintiffs' class allegations should be stricken from the Class Action Complaint based on their failure to timely file a motion for class certification pursuant to the 30 day deadline established in Local Rule CV-23. The 30 day period began to run on September 6, 2005, upon the filing of timely answers by numerous Defendants. As of October 11, 2005, the Plaintiffs have failed to file a class certification motion, and therefore all class allegations should be stricken.

### **III.** **CONCLUSION**

All of Plaintiffs' class allegations should be stricken because the Plaintiffs failed to timely file a motion for class certification pursuant to Local Rule CV-23. Defendants request such other and further relief to which they may be entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This pleading was served in compliance with Rule 5 of the Federal Rules of Civil Procedure on October 11, 2005.

  
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